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OFFICE OF PETITIONS

In re Application of	:	DECISION ON APPLICATION
Richard Watson	:	FOR
Application No. 09/758,381	:	PATENT TERM ADJUSTMENT
Filed: January 10, 2001	:	
Title: FINGERTIP DEVICE FOR	:	
RUPTURING AMNIOTIC MEMBRANES	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT," filed September 2, 2004. Applicant requests correction of the patent term adjustment to date from sixty four (64) days to three hundred thirty-seven (337) days. In part, applicant requests reconsideration on the basis of the Office taking in excess of three years to issue the patent.

As it relates to the Office's failure to issue the patent within 3 years of the filing date, a decision is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b).

Patentee is given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within 3 years. A copy of this decision should accompany the request. Patentee may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of § 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

The request for reconsideration of the patent term adjustment at the time of mailing of the notice of allowance is otherwise **DISMISSED**.

On June 2, 2004, the Office mailed the initial Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 64 days. On September 2, 2004,

applicant timely¹ submitted an application for patent term adjustment (with required fee). Therein, applicant stated that a period of reduction of 92 days (rather than 93 days) should have been entered in the record for applicant's late deposit of a response on February 14, 2003.

A review of the record reveals that the response was deposited on February 15, 2003, and a period of reduction of 93 days was properly entered. The response is present in the record with a date of receipt thereon of February 15, 2003. Petitioner has provided neither a copy of an Express Mail mailing label showing a date-in of February 14, 2003 nor has filed a petition under § 1.10 to correct the date of receipt of record. Moreover, a review of the USPTO's USPS Express Mail Information Database confirms that the response deposited was accepted by the USPS on February 15, 2003 at 12:50 in the morning. Thus, use of the date of February 15, 2003 for receipt of the response and calculation of the reduction was proper.

In view thereof, the patent term adjustment at the time of mailing of the notice of allowance is sixty four (64) days.

Petitioner is reminded that if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Office of Patent Publication for issuance of the patent.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

*Karen Ferriter
for*

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: USPTO's USPS Express Mail Information Database record

¹ The Issue Fee payment was also submitted on September 2, 2004.